

You may not answer Issue No. 1 "No" unless you agree unanimously, and you may not answer Issue No. 1 "Yes" unless ten (10) or more of you agree to do so.

Members of the jury need not agree on what particular evidence supports an affirmative answer to Issue No. 1.

By the term "preponderance of the evidence" is meant the greater weight of the credible evidence.

With respect to Issue No. 1, you are instructed that mental retardation means significantly sub-average general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

Mental retardation means significantly sub-average intellectual functioning of a person that is concurrent with deficits or impairments in adaptive functioning in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self direction, functional academic skills, work, leisure, health, and safety. The onset of the deficits or impairments must originate before the age of 18.

Sub-average general intellectual functioning refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age-group mean for the tests used.

In regard to standardized psychometric instruments you are instructed that the recognized standard error of measurement is a

range of five points higher or lower.

Adaptive behavior is defined as the effectiveness with or degree to which a person meets the standards of personal independence and social responsibility expected of the person's age and cultural group.

Issue No. 1 is:

Do you find by a preponderance of the evidence that the defendant, Jonathan Depue, is a person with mental retardation?

Answer: We, the jury, because at least ten (10) jurors find and determine by a preponderance of the evidence that the defendant is a person with mental retardation find the answer to Issue No. 1 is "Yes."

OR

Answer: We, the jury, unanimously find that the answer to Issue No. 1 is "No."

You are instructed that if you return a verdict of "Yes" to Issue No. 1 then you shall cease your deliberations. You are further instructed that if you return a verdict of "No" to Issue No. 1, only then are you to answer Issue No. 2.

You are instructed that the State must prove Issue No. 2 beyond a reasonable doubt.

The jury may not answer Issue No. 2 "Yes" unless there is

unanimous agreement of the individual jurors upon that answer.

The jury may not answer Issue No. 2 "No" unless ten or more jurors agree upon that answer. In determining the answer Issue No. 2 you are instructed that you need not agree on what particular evidence supports a negative answer to the issue.

In deliberating upon Issue No. 2, you shall consider all evidence admitted at the guilt or innocence stage and the punishment stage, including evidence of the defendant's background or character or the circumstances of the offense that militates for or mitigates against the imposition of the death penalty.

Issue No. 2 is:

Do you find from the evidence beyond a reasonable doubt that there is a probability that the defendant, Jonathan Depue, would commit criminal acts of violence that would constitute a continuing threat to society?

Answer: We the jury unanimously find and determine beyond a reasonable doubt the answer to Issue No. 2 is "Yes."

OR

Answer: We the jury, because at least ten (10) jurors have a reasonable doubt as to the probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society, answer Issue No. 2 "No."

You are instructed that if you return a verdict of "No" to Issue No. 2 then you shall cease your deliberations. You are further instructed that if you return a verdict of "Yes" to Issue No. 2, only then are you to answer Issue No. 3.

You are instructed that the State must prove Issue No. 3 beyond a reasonable doubt.

In deliberating upon Issue No. 3, you shall consider all evidence admitted at the guilt or innocence stage and the punishment stage, including evidence of the defendant's background or character or the circumstances of the offense that militates for or mitigates against the imposition of the death penalty.

In deliberating on Issue 3 you are instructed that you need not agree on what particular evidence supports a negative answer.

The jury may not answer Issue No. 3 "Yes" unless there is unanimous agreement of the individual jurors upon that answer.

The jury may not answer Issue No. 3 "No" unless ten (10) or more jurors agree on that answer.

Issue No. 3 is:

Do you find from the evidence beyond a reasonable doubt that the defendant, Jonathan Depue, actually caused the death of Aleta Rhodes or did not actually cause the death of Aleta Rhodes but intended to kill Aleta Rhodes or another or anticipated that a human life would be taken?

Answer: We, the jury, unanimously find and determine beyond a

reasonable doubt that the answer to Issue No. 3 is "Yes."

OR

Answer: We, the jury, because at least ten (10) jurors have a reasonable doubt as to whether the defendant, Jonathan Depue, actually caused the death of Aleta Rhodes or did not actually cause the death of Aleta Rhodes but intended to kill Aleta Rhodes or another or anticipated that a human life would be taken, determine that the answer to Issue No. 3 is "No."

You are instructed that if you return a verdict of "No" to Issue No. 3 then you shall cease your deliberations. You are further instructed that if you return a verdict of "Yes" to Issue No. 3, only then are you to answer Issue No. 4.

In determining the answer to Issue No. 4 you are instructed that you need not agree on what particular evidence supports an affirmative finding on the issue and shall consider mitigating evidence to be evidence that a juror might regard as reducing the defendant's moral blameworthiness.

The jury may not answer Issue No. 4 "No" unless it agrees unanimously and may not answer Issue No. 4 "Yes" unless ten or more jurors agree. Neither the State nor the Defense has the burden on this issue.

Issue No. 4 is:

State whether, taking into consideration all the evidence,

including the circumstances of the offense, the defendant's character and background, the mental impairment of the defendant that might not amount to mental retardation, if any, and the personal moral culpability of the defendant, there is a sufficient mitigating circumstance or are sufficient mitigating circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed.

Answer: We, the jury, unanimously find and determine that the answer to Issue No. 4 is "No."

OR

Answer: We, the jury, because at least ten (10) jurors find that there is a sufficient mitigating circumstance or are sufficient mitigating circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed, answer to Issue No. 4 is "Yes."

You are instructed that the defendant may testify in his own behalf if he chooses to do so, but if he elects not to do so, that fact cannot be taken by you as a circumstance against him nor prejudice him in any way. The defendant has elected not to testify in this punishment phase of trial, and you are instructed that you cannot and must not refer or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever.

You are instructed that if you answer that a circumstance or circumstances warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed, the court will sentence the defendant to imprisonment in the institutional division of the Texas Department of Criminal Justice for life without parole. If the defendant is sentenced to confinement for life without parole, he is ineligible for release from the department on parole.

You are the exclusive judges of the facts proved, of the credibility of the witnesses, and of the weight to be given to the testimony, but you are bound to receive the law from the Court, which is herein given you, and be governed thereby.

Respectfully submitted,



JUDGE PHILIP A. KAZEN, JR.
227TH Judicial District
Bexar County, Texas

ISSUE NO. 2:

Do you find from the evidence beyond a reasonable doubt that there is a probability that the defendant, Jonathan Depue, would commit criminal acts of violence that would constitute a continuing threat to society?

Answer: We, the jury, unanimously find and determine beyond a reasonable doubt that the answer to Issue No. 2 is "Yes."



PRESIDING JUROR

OR

Answer: We, the jury, because at least ten (10) jurors have a reasonable doubt as to the probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society, determine that the answer to Issue No. 2 is "No."

PRESIDING JUROR

If you have answered Issue No. 2 "Yes," then answer the following Issue No. 3.

ISSUE NO. 3:

Do you find from the evidence beyond a reasonable doubt that the defendant, Jonathan Depue, actually caused the death of Aleta Rhodes or did not actually cause the death of Aleta Rhodes but intended to kill Aleta Rhodes or another or that he anticipated that a human life would be taken?

Answer: We, the jury, unanimously find and determine beyond a reasonable doubt that the answer to Issue No. 3 is "Yes."

PRESIDING JUROR

OR

Answer: We, the jury, because at least ten (10) jurors have a reasonable doubt as to whether the defendant, Jonathan Depue, actually caused the death of Aleta Rhodes or did not actually cause the death of Aleta Rhodes but intended to kill Aleta Rhodes or another or anticipated that a human life would be taken, determine that the answer to Issue No. 3 is "No."


PRESIDING JUROR

If you have answered Issue No. 3 "Yes," then you will answer the following Issue No. 4.

ISSUE NO. 4:

Taking into consideration all the evidence, including the circumstances of the offense, the defendant's character and background, the mental impairment of the defendant that might not amount to mental retardation, if any, and the personal moral culpability of the defendant, is there a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed?

Answer: We, the jury, unanimously find and determine that the answer to Issue No. 4 is "No."

PRESIDING JUROR

OR

Answer: We, the jury, because at least ten (10) jurors taking into consideration all the evidence, including the circumstances of the offense, the defendant's character and background, the mental impairment of the defendant that might not amount to mental retardation, if any, and the personal moral culpability of the defendant, find and determine that there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed, answer Issue No. 4 "Yes."

PRESIDING JUROR

We, the Jury, return in open court the above answers as our answers to the Issues submitted to us, and the same is our verdict in this case.

David L. Allen

PRESIDING JUROR

